

RULEMAKING NOTICE FORM

Notice Number 2015-152

Rule Number He-W 553.01 – 553.06

1. Agency Name & Address:

**NH Dept. of Health & Human Services
Office of Medicaid Business and Policy
129 Pleasant Street
Concord, NH 03301**

2. RSA Authority:

RSA 161:4-a, X

3. Federal Authority:

4. Type of Action:

Adoption

Amendment

Repeal

Readoption

Readoption w/amendment **X**

5. Short Title: **Home Health Services**

6. (a) Summary of what the rule says and of any proposed amendments:

He-W 553 describes (1) the home health services covered by NH Medicaid and the coverage criteria for those services, (2) the services that are not covered as home health services, and (3) the provider credentialing and documentation requirements that providers of home health services must meet.

This proposal makes no changes to eligibility and there is no expansion or reduction in services.

Some changes were a result of the Department's discussion with the Home Care Association of New Hampshire, and the Department's program integrity and Medicaid units based on those units' experience in administering this benefit.

The proposed rule includes the following changes:

- **Definitions have been added for "home health care provider," "home health services," and "licensed nursing assistant" because they were previously used in the rule but were not defined.**
- **Language has been added to the recipient eligibility section to reflect the language found in the federal regulation.**
- **The requirement for a skilled nurse, who is not affiliated with a home health agency, to have an orientation to acceptable clinical and administrative record keeping by a health department nurse has been removed, because it is no longer current practice.**
- **Changes were made to the required documentation in consultation with the department's program integrity unit, including the requirement to maintain documentation supporting claims for 6 years. This is currently required by the Medicaid provider agreement that all providers must sign and adhere to. Also, the rule now includes skilled nurses in the documentation section. Skilled nurses, who not affiliated with a home health agency, are currently required to keep and maintain records as part of the Medicaid provider agreement with the Department, and the rule was changed to clarify that these individuals must also keep records.**
- **Changes have been made to clarify that a health assessment for recipients under the age of 21 must be done by an appropriate pediatric tool.**
- **Medication reconciliation and education about medication therapeutic effects, side effects, and adherence has been added to the skilled nursing services.**
- **Administration of medications by a licensed nursing assistant if delegated by a nurse has been added to reflect recent changes made to RSA 326-B:14,II-a, as a result of HB 484 (Chapter 239, Laws of 2015).**

Most of the proposed rules are due to expire on September 11, 2015, but are subject to extension pursuant to RSA 541-A:14-a.

6. (b) Brief description of the groups affected:

This rule affects NH Medicaid recipients who receive home health services, as well as NH Medicaid enrolled providers of home health services.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Federal Reg./RSA
He-W 553.01	42 CFR 440.70; 42 CFR 440.210; 42 CFR 440.220; 42 CFR 441.15; RSA 326-B
He-W 553.02	42 CFR 440.70; 42 CFR 440.210; 42 CFR 440.220
He-W 553.03	42 CFR 440.70(d); RSA 151:2-b,I
He-W 553.04	42 CFR 440.70; 42 CFR 440.230; 42 CFR 484.55
He-W 553.05	42 CFR 440.70; 42 CFR 441.15; RSA 326-B
He-W 553.06	42 CFR 440.230(d)

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Michael Holt**

Title: **Rules Coordinator**

Address: **Dept. of Health and Human Services
Administrative Rules Unit
129 Pleasant St.
Concord, NH 03301**

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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, October 8, 2015**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, October 1, 2015 at 2:00 PM**

Place: [**DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH**](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **15:162**, dated **09/03/15**

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When compared to existing rules, the proposed rules may increase state costs for home health services, and may increase expenditures and revenue to independently owned businesses by an indeterminable amount.

2. Cite the Federal mandate. Identify the impact of state funds:

The rule is mandated by 42 CFR 440.70. There is no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

The proposed rules clarify that individuals staying in an intermediate care facility for individuals with intellectual disabilities (IFC/IID) for a short term illness may receive home health services if the facility is not required to provide the service and the service prevents an individual from being transferred to a nursing facility. To the extent home health providers were not aware these services could be provided, utilization of the home health services could increase resulting in additional costs to the State general fund. There will be no cost or benefit to any State special fund.

B. To State citizens and political subdivisions:

None.

C. To Independently owned businesses:

There could be an indeterminable cost to independent skilled nurses unaffiliated with a home health agency if they do not currently maintain documentation in accordance with the Medicaid provider agreement. Home care agencies may benefit from the provision of additional services described in 3(A) above..

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules modify an existing program or responsibility, but do not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.

CHAPTER He-W 500 MEDICAL ASSISTANCE

PART He-W 553 HOME HEALTH SERVICES

Readopt with amendment He-W 553.01, effective 9/11/07 (Document #8972), as amended effective 3/18/08 (Document #9105), as amended effective 7/1/12 (Document #10139), to read as follows:

He-W 553.01 Definitions.

(a) “Department” means the New Hampshire department of health and human services.

(b) “Direct care time” means the time a licensed nursing assistant, registered nurse, or licensed practical nurse ~~caregiver~~ spends with one recipient during which home health ~~care~~ services are provided only to that individual recipient at the recipient’s residence.

~~(c) “Home health aide” means a nursing assistant, licensed in accordance with RSA 326-B.~~

~~(c)~~ (d) “Home health aide services” means services provided to a recipient which constitute hands-on care and are required to maintain the recipient’s health, facilitate treatment of the recipient’s medical condition, illness or injury, and are provided under the supervision of a registered nurse or licensed practical nurse.

(d) “Home health care provider” means any organization, home health agency or business entity engaged in arranging for or providing skilled nursing services, home health aide services, or other therapeutic services as described in RSA 151:2-b(I) and 42 CFR 440.70(d) and is participating provider in accordance with He-W 553.03.

(e) “Home health services” means skilled nursing services and home health aide services.

(f) “Licensed nursing assistant” means an individual who is licensed in accordance with RSA 326-B to provide home health aide services.

~~(e)~~(g) “Low Utilization Payment Adjustment (LUPA) rate” means the national per visit amount by discipline established for Medicare home health services and published annually in the Federal Register by the Centers for Medicare and Medicaid Services.

~~(f)~~(h) “Medicaid” means the Title XIX and Title XXI programs administered by the department, which makes medical assistance available to eligible individuals.

~~(e)~~(i) “Non-routine supplies” means those supplies necessary to complete specific medical treatments ordered by a physician, such as ostomy supplies, IV supplies, catheters and catheter supplies, syringes and needles, sterile dressings, and wound care supplies, and does not include routine supplies.

~~(h)~~(j) “Recipient” means an individual who is eligible for and receiving medical assistance under the medicaid program.

~~(i)~~(k) “Routine supplies” means those supplies used incidentally in the course of a visit and include gloves, alcohol wipes, blood drawing supplies, adhesive and paper tape, and non-sterile dressings.

~~(+)(l)~~ “Skilled nursing service” means a service that must be provided by a registered nurse or a licensed practical nurse because the nature of the service is inherently complex or the recipient’s condition is such that the service can be safely and effectively provided only by a skilled nurse.

~~(+)(m)~~ “Title XIX” means the joint federal-state program described in Title XIX of the Social Security Act and administered in New Hampshire by the department under the medicaid program.

~~(+)(n)~~ “Title XXI” means the joint federal-state program described in Title XXI of the Social Security Act and administered in New Hampshire by the department under the medicaid program.

~~(+)(o)~~ “Unit” means 15 minutes.

~~(+)(p)~~ “Visit” means a personal encounter with the recipient by staff of a home health ~~services~~ care provider for the purpose of providing a covered service(s).

Readopt with amendment He-W 553.02 – 553.06, effective 9/11/07 (Document #8972), to read as follows:

He-W 553.02 Recipient Eligibility. A recipient shall be eligible to receive home health services in accordance with 42 CFR 441.15(c) if all of the following criteria are met:

- (a) The recipient is under the care of a physician;
- (b) The recipient requires home health services as ordered by his or her physician and documented in a written plan of care; and
- (c) The recipient resides in his or her primary or temporary residence, excluding a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities (ICF/IID), except that home health services may be provided in an ICF/IID for a short term, acute care illness if the service is not required to be provided by the facility and the provision of the service prevents the recipient’s transfer to a nursing facility~~the mentally retarded (ICF-MR)~~.

He-W 553.03 Provider Participation.

- (a) All ~~participating~~ home health ~~services-care~~ providers shall:
 - (1) Hold a current New Hampshire state license as a home health care provider, in accordance with RSA 151:2-b, I, and He-P 809;
 - (2) Be certified to participate in the medicare program; and
 - (3) Be a New Hampshire enrolled medicaid Title XIX provider.
- (b) When there is no licensed and certified home health ~~services-care~~ provider in the area, a registered nurse may provide home health services if the registered nurse:
 - (1) Is currently licensed to practice in the state in which he/she practices;
 - (2) Receives written orders from the recipient’s physician;
 - (3) Documents the care and services provided in accordance with He-W 553.04;

~~(4) Has had orientation to acceptable clinical and administrative record keeping from a health department nurse; and~~

(45) Is a NH enrolled medicaid Title XIX provider of home health services.

He-W 553.04 Required Documentation.

(a) Home health ~~careservices~~ providers and skilled nurses shall maintain complete and timely records for each recipient receiving services in accordance with He-W 520, and this part, and failure to maintain records in accordance with He-W 520 and this part shall entitle the department to recoupment of state or federal medicaid payments made as permitted by 42 CFR 455, 42 CFR 456 and 42 CFR 477.

(b) In addition to the requirement set forth in (a) above, home health care providers and skilled nurses shall maintain the documentation required by this part and He-W520 to support claims submitted for reimbursement for a minimum of 6 years or until the resolution of any legal action(s) commenced within the 6 year period, whichever is longer.

(~~c~~b) Recipient records shall include all of the following:

(1) Written orders for initial home health services and certification of the need for home health services signed by the recipient's physician specifying:

- a. The frequency of medication and treatment to be administered; and
- b. The period of time to be covered by the orders;

(2) A recipient history and a health assessment for recipients under the age of 21 with an appropriate pediatric tool or a health assessment for adults, completed upon admission by the home health ~~services-care~~ provider's registered nurse or appropriate rehabilitation skilled professional in accordance with 42 CFR 484.55(~~a~~);

(3) Documentation at least every 60 days to indicate review of the recipient's health assessment by the registered nurse or appropriate rehabilitation skilled professional in accordance with 42 CFR 484.55(~~a~~);

(4) A plan of care including:

- a. The diagnosis related to the recipient's need for home health services;
- b. Other diagnoses;
- c. An assessment of the recipient's mental alertness and cognitive level;
- d. Measurable recipient goals;
- e. Types of services and equipment required;
- f. Frequency of home health services;
- g. Anticipated length of treatment;

- h. [General p](#)Prognosis;
- i. Rehabilitation potential;
- j. Functional limitations;
- k. Activities permitted;
- l. Nutritional requirements;
- m. Medications;
- n. Treatments;
- o. Safety measures required to protect the recipient from potential injury;
- p. Services being provided by non-paid caregivers involved in the recipient's treatment and any related education or training needs of the caregivers; and
- q. Discharge plans;

(5) Documentation at least every 60 days, to indicate review of the plan of care by the registered nurse or licensed physical therapist in accordance with the recipient's physician's orders;

(6) Auditable, paper, or electronic service notes for each service provided to the recipient identifying:

- a. Name of recipient;
- b. Date of service;
- c. Location where service was provided, if other than the recipient's primary residence;
- d. Primary purpose of the home health services;
- e. Description of services provided;
- f. Amount of direct care time spent providing each home health service;
- g. Condition of the recipient at the time the service was provided, ~~including the recipient's ability to participate in the activity;~~
- h. Any progress the recipient has made towards goals identified on the plan of care;
- i. An explanation of any variation from the prescribed plan of care; and
- j. Name, title, and written or electronic signature of the individual providing the [home health service](#) care; and

(7) Documentation of any consults or meetings regarding the recipient's care, which also indicates the results of the consult or meeting.

(de) Verbal orders shall be signed by the physician who issues the order within 30 days of the date the verbal order is issued.

(ed) Home health ~~services-care~~ providers and skilled nurses shall make the documentation required by this part and He-W 520 recipient records available for review by available to the department upon the request of the department.

He-W 553.05 Covered Services.

(a) Covered services shall be those home health services, the need for which is consistent with the nature of the recipient's condition and accepted standards of medical and nursing practice, and provided ~~in at~~ the recipient's place of residence, as defined in 42 CFR 440.70-(4) (c) ~~and 42 CFR 441.15(e)~~.

(b) Covered Home health ~~covered~~ services shall include:

(1) Skilled nursing services including:

a. Skilled observation and assessment of the recipient's status, including available support system and physical environment;

b. Administration of medications, including intramuscular and intravenous medications;

c. Insertion and irrigation of indwelling urinary catheters;

d. Administration of enemas, providing ostomy care, and other related procedures to provide assistance with bowel evacuation;

e. Skilled respiratory care including suctioning, tracheostomy care, administration of inhalation therapies, and chest physiotherapy;

f. Wound care, care of decubitus ulcers, and treatment of other extensive skin disorders;

g. Administration of enteral feedings;

h. Rehabilitative nursing procedures such as the initiation and supervision of bowel and bladder training programs;

i. Education, specific to the recipient's condition, provided to the recipient and significant others involved with the recipient; ~~and~~

j. Pre-filling of medication administration devices such as pill planners;

k. Medication reconciliation; and

l. Education about medication therapeutic effects, side effects, and adherence to prescribed regimen;

(2) Home health aide services performed by a licensed nursing assistant including assistance provided to a recipient for the following:

- a. Personal hygiene, including bathing, grooming, dressing, and changing bed linens, when there is a medical need and it is documented in the care plan;
- b. Ambulation and movement, including range of motion exercises, turning, positioning, and transferring;
- c. Nutritional care, including feeding and hydration;
- d. Elimination, including toileting and bowel/bladder training;
- e. Assistance with the use of adaptive prosthetic and orthotic devices;
- f. Assistance with self-administering medications, when the assistance provided by the aide does not require the skill of a licensed nurse;
- g. Administration of medications by a medication licensed nursing assistant or by an licensed nursing assistant if delegated by a licensed nurse in accordance with RSA 326-B:14, II-a;
- h. Activities that are directly supportive of skilled therapy services;
- i. Other medically related activities which can safely and effectively be provided by a licensed ~~home health aide~~nursing assistant, including simple dressing changes;
- j. Services such as light housekeeping and meal preparation only when there is documentation that no other support in the home exists, and only when such services are directly related to the recipient's medical condition and care needs; and
- k. Tasks properly delegated to the licensed nursing assistant ~~home health aide~~ by the supervising licensed nurse pursuant to RSA 326-B:28.

(3) Physical therapy, speech therapy, and occupational therapy subject to the limits specified in He-W 530;

(4) Durable medical equipment, medical supplies, prosthetics and orthotics devices, and telemonitoring equipment, when prescribed by the attending physician; and

(5) Office visits, when the recipient receives services provided by an advanced practice registered nurse ~~practitioner~~ at the location of the home health ~~services~~care provider as an alternative to visiting a physician's office for treatment.

He-W 553.06 Non-Covered Services. Non-covered home health services shall include:

- (a) Physician services;
- (b) Social worker services;

(c) Nutritionist services;

(d) Visits provided solely for the purpose of supervising the ~~home health aide~~ licensed nursing assistant;

(e) Services provided by a ~~home health aide~~ licensed nursing assistant or skilled nurse which are not medically related and which constitute routine household activities, day care, or recreational services including such services as light housekeeping and meal preparation, except ~~for those services~~ as described in He-W 553.05(2)(j);

(f) Services rendered without a physician's signed order;

(g) Any service whose primary purpose is providing emotional support;

(h) Any service whose primary purpose is the care or supervision that would be required by any individual of the recipient's chronological age;

(i) Any service whose purpose is to implement follow-through on a behavioral treatment plan such as services to assist or provide supervision to a recipient under the age of 21 with a behavioral treatment plan;

(j) Drugs and biologicals;

(k) Meals delivered to the home; and

(l) Homemaker services considered to be general household activities, including:

(1) Preparing meals;

(2) Keeping a safe environment in areas of the home used by the individual needing the service;

(3) Changing bed linens;

(4) Performing house cleaning;

(5) Rearranging furniture to assure that the recipient can safely reach necessary supplies or medication;

(6) Completing laundry tasks essential to the recipient's comfort and cleanliness; and

(7) Assisting the recipient with purchasing food and helping with the preparation of meals and special diets.

APPENDIX

RULE	STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS
He-W 553.01	42 CFR 440.70; 42 CFR 440.210; 42 CFR 440.220; 42 CFR 441.15; RSA 326-B
He-W 553.02	42 CFR 440.70; 42 CFR 440.210; 42 CFR 440.220
He-W 553.03	42 CFR 440.70(d); RSA 151:2-b,I
He-W 553.04	42 CFR 440.70; 42 CFR 440.230; 42 CFR 484.55
He-W 553.05	42 CFR 440.70; 42 CFR 441.15; RSA 326-B
He-W 553.06	42 CFR 440.230(d)